IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No.552 of 2006

Smt.Narmada Waman Keni .. Appellant

versus

Yashwant Rajaram Sawant & ors. .. Respondents

...

Mr.S. Sakhardande with Mr.M.G. Gawade for the appellant.

Mr.J. Rais i/b R.N. kachare for respondent nos.1 to 4.

Mr.D.P. Adsule, AGP for respondent no.6.

CORAM : D.G. KARNIK, J

DATED : 28th August 2006.

P.C.:

1. This appeal is directed against the order dated 26th June 2006 passed by the learned Judge of the City Civil Court declining to grant ad-interim injunction.

2. The suit property bearing Survey no.33/12, CTS

no.853 was acquired by the respondent no.5, Bombay Municipal Corporation, under the provisions of the Land Acquisition Act for the purpose of establishment of Industrial Zone and allotting the land to the eligible persons for setting up of industries. The appellant claims that her father Shivram was a tenant in the suit property prior to its acquisition.

3. Despite acquisition, the suit property along with other adjoining properties, which were also acquired, could not be developed into an industrial zone. Respondent no.5 therefore released the other adjoining the lands and retransferred them to the original owners on their paying to the Municipal Corporation certain price. Respondent no.1 obtained a Power of attorney from the original owners and moved the respondent no.5 for release of the suit land and/or for retransfer of the suit land to him for the purpose of development of a co-operative housing society for persons belonging to middle income group. Initially, the respondent no.5 did not consider the request favourably. However, subsequently, the respondent no.5 granted the request and agreed to allot and retransfer the land to respondent no.1 on condition that he shall pay to the respondent no.5 price equivalent to the

original acquisition cost plus compound interest thereon at the rate of 15%. Accordingly, respondent no.1 paid the said price and land was allotted and retransferred to him. Thereafter, the present suit has been filed by the appellant claiming that her father was a tenant in the property, the tenancy subsists and therefore, the suit land could not be allotted or retransferred by the respondent no.5 without her consent. the land cannot be re-granted them without her consent.

4. Under section 16 of the Land Acquisition Act, on possession being taken the acquired property vests in the government free from encumbrances. It is settled position in law that lease is an encumbrance. Therefore on acquisition of the suit property the lease if any, in favour of the appellant’s father came to an end and the property vested in the respondent no.5 free from all encumberances including the lease. Appellant, therefore, cannot be said to have any interest in the property. In my view, therefore, prima facie case for grant of ad-interim injunction was not made out by the appellant and the learned trial Judge was right in refusing to ad-interim relief.

5. There is no merit in the appeal which is hereby dismissed.

6. Request made by learned counsel for the appellant for an order of status quo is rejected.

(D.G. KARNIK, J)